

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

**FIRST APPEAL NO.213 OF 2021 WITH
CIVIL APPLICATION NO.2197 OF 2021**

New India Assurance Company Limited,
Branch Office, Pune, for the service of
summons, Yashodeep Building,
Mahaveer Chowk, Station Road, Parbhani

Through its Authorised Signatory,
New India Assurance Company Limited
senior Divisional Manager/ Incharge
Legal Hub, Mahesh Compound,
Adalat Road, Aurangabad

... APPELLANT

VERSUS

1. Seema w/o Ravindra Khade,
Age 34 years, Occu. Household
- 2) Yesh s/o Ravindra Khade,
Age 12 years, Occu. Education
- 3) Ashvadeep s/o Ravindra Khade
Age 14 years, Occu. Education

Respondent Nos.2 and 3 being minors
u/g of their mother i.e.
Respondent No.1.

All R/o Wada, Tq. Mangrul Pir,
District Washim

At present R/o Parbhani,
Tq. and Dist. Parbhani

- 4) Directorate of Health Services,
Deputy Director,
Health Service (Transport),
C/o Medical Superintendent,
Rural Hospital, Chakan,
A/c BVG india Ltd., Post Chakan,
Tq. Khed, Dist. Pune.

... RESPONDENTS

.....
Shri Mohit R. Deshmukh, Advocate for appellant
Shri P.S. Agrawal, Advocate for respondents No.1 to 3
.....

CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 1st December, 2021.

Date of pronouncing judgment : 7th March, 2022.

J U D G M E N T :

Heard learned counsel for the parties. The appeal is taken up for final hearing at admission stage with their consent.

This is an appeal under Section 30 of the Employees Compensation Act, 1923 (for short E.C. Act). The challenge herein is to the order dated 16/10/2020, passed in W.C.F.A. No.6/2016, granting compensation to the respondents No.1 to 3 herein on account of death arising out of injury caused to late Ravindra by accident, arising out of and in the course of his employment with the respondent No.4, Director of Health Services. The order impugned herein reads thus :

“1) The respondent Nos.1 and 2 shall jointly and severally pay the compensation of Rs.5,52,510/- (Rupees Five lakh Fifty Two thousand five hundred ten only) to the petitioners, within two

months from the date of this order. In case of default, amount of compensation shall carry interest at the rate of 12% from the date of filing of the petition till its complete realisation.

2) The respondent No.1 shall pay 50% penalty i.e. Rs.2,76,255/- (Rupees Two lakh Seventy Six thousand two hundred fifty five only) and interest at the rate of 12% thereon from the date of incident, till filing of the petition to the petitioners.

3)”

The appellant was the respondent No.1 before the Commissioner under E.C. Act, who has passed the impugned order.

2. It is the case of the respondents No.1 to 3 (legal representatives of the deceased) that the deceased Ravindra was in service with the respondent No.4 as a Driver. He would drive an Ambulance, No.MH-14-CL-896. He was on duty on 24/10/2014. One Chandrakant Mukhmale was to succeed him on duty for the day. The duty hours of the deceased, however, were not over. For some work, the deceased wanted to visit his own residence. He, therefore, borrowed the motorbike of his colleague and started thereon. The motorbike ridden by the deceased hit the roadside stone on way. As a result, the deceased suffered multiple injuries and succumbed thereto.

3. The L.Rs. of the deceased moved the application for compensation against the respondent No.4 employer and the insurer of the Ambulance (appellant herein). It is their case that, the deceased was paid a monthly salary of Rs.6000/-. His death occurred as a result of injuries suffered in an accident arising out of and in the course of his employment.

4. The respondent No.4 - employer did not file its written statement nor has participated in the proceedings. The appellant Insurance Company contested the claim, disputing almost all the averments in the application.

5. The Tribunal, on appreciating the evidence in the case, allowed the application in terms of the order stated herinabove.

6. The substantial question of law involved in this appeal is as under :

Whether the deceased Ravindra died of the injuries suffered in the accident arising out of and in the course of his employment even without there being involvement of the Ambulance ?

7. Learned counsel for the appellant Insurance Company would submit that, the evidence on record undoubtedly suggests that the deceased was on his way home post his duty hours were over. Statement of the widow of the deceased reinforces the same. According to learned counsel, there is no causal connection between the cause of death and employment of the deceased. Learned counsel has relied on the following authorities to ultimately submitting for allowing the appeal :

1. Mamtaj Bi Bapusab Nadaf & ors. Vs. United India Insurance Company & ors. [(2010) 10 SCC 536]
2. General Manager, B.E.S.T. Undertaking, Bombay Vs. Agnes [AIR 1964 SC 193]

8. Learned counsel for the L.Rs. of the deceased would, on the other hand, submit that, the respondent No.4 employer did not participate in the proceedings. As such, the case of the L.Rs. that the deceased was on duty and succumbed to the injuries caused in an accident arising out of and in the course of his employment went unchallenged. The widow of the deceased gave her oral evidence consistent with the averments in the claim application. According to learned counsel, the duty hours of the deceased were not over. the statement of his colleague recorded by police official would

vouch for the same. According to learned counsel, theory of notional extension of employment gets invoked in the facts and circumstances of the case. He, therefore, urged for dismissal of the appeal. The learned counsel relied on the following authorities :

- 1) Poonam Devi & ors. Vs. Oriental Insurance Co. Ltd.
[AIR 2020 SC 1305]
- 2) Manju Sarkar 7 ors. Vs. Mabish Miah & ors.
[2014(8) SCALE 221]'
- 3) New India Assurance Co. Ltd. Vs. Vijay Bapu Kamble
& ors. [2021 (2) TAC 73]

9. Considered the submissions advanced. Perused the evidence relied on.

Admittedly, the deceased was in service with the respondent No.4 - employer as a Driver on the Ambulance No.MH-14-CL-896. He was on duty on the fateful day. Admittedly, he died while he was on his way home on a motorbike. The motorbike had hit a roadside stone. The widow of the deceased, in her oral evidence, testified that the deceased was on way home for some work. He was again to resume duty. When he was on way home, his duty hours were not over. In her cross-examination, she has denied that the deceased was returning from Sailu Bazar to village Wada

at the relevant time.

10. The police papers of the accident were placed on record by the L.Rs. of the deceased. Statement Exh.29 of the brother of the deceased suggests that the deceased was 40 years of age. He was serving as a Driver on a vehicle of Primary Health Centre at Sailu Bazar. The deceased was returning home from Sailu Bazar by 9.30 p.m. The widow of the deceased stated in her statement to the police official that the deceased had reported on duty by 7.00 in the morning on 24/10/2014. He was returning home after duty by 9.30 p.m. According to her, the deceased was 38 years of age. While the statement of Chandrakant Mukhmale, whose motorbike was being ridden by the deceased at the material time, records that the deceased was on duty. He (deceased) left for home on his motorbike, assuring to come back to resume duty. On way he met with the accident and died.

11. There is no concrete evidence to suggest that the duty hours of the deceased were in fact over and, therefore, he was on his way back home. Admittedly, he was Driver of an Ambulance. It was an emergency service. For want of concrete evidence as to his duty hours to have been over, it has to be assumed that the deceased died during the course

of his employment. The same is, however, not sufficient to grant compensation. It is required to be proved that death has occurred as a result of injury suffered by accident arising out of and in the course of his employment. The police papers, pleadings and even oral evidence of the widow of the deceased are silent to state for what purpose the deceased wanted to visit his home. There has to be some causal connection between cause of death and nature of employment. If the deceased was on his way home for his personal work, the death cannot be said to have occurred by accident arising out of and in the course of his employment. There is no whisper in this regard.

12. The authorities relied on by the learned counsel for the L.Rs. are distinguishable on facts. The judgment of the Apex Court in Poonam Devi's case (supra) indicates that the deceased, while driving the truck, had halted for a while. He went to the canal to fetch water in a can for the truck and to refresh himself by a bath before continuing the journey, was incidental to the employment. It has been held therein that every action of the Driver of the truck to ensure the safety of the truck belonging to the employer and to ensure his own safety by a safe journey for himself has to be considered as incidental to the employment by extension of

the notional employment theory.

13. The facts in the case of General Manager, BEST Undertaking, Bombay (supra) indicate that the bus driver (deceased) was given the facility in his capacity as a driver to travel in any bus belonging to the undertaking, presumably, to enable him to keep up punctuality and to discharge his onerous obligations. It is given to him not as a grace, but is of right because efficiency of the service demands it. Therefore, the right of a bus driver to travel in the bus in order to discharge his duties punctually and efficiently was a condition of his service and there was an implied obligation on his part to travel in the said buses as a part of his duty.

14. Whereas the facts in Manju Sarkar's case (supra) indicates that the deceased was employed to drive the truck at the relevant time. On reaching Dharmnagar, he noticed some mechanical trouble in the truck and he got down for making arrangement for repairing the same and in the night he met with the accident.

15. While the facts of Vijay Bapu's case (supra) suggest that the deceased, as a Driver, had taken some students and teachers to a picnic spot. After parking the motor vehicle at the resort, he went for shaving and met with

a vehicular accident, resulting into his death. On facts and circumstances of the said case, the claim therein was granted.

16. The facts of the case in hand, though suggest that the deceased was on his way home during duty hours while the accident took place, there is no shred of evidence to indicate what prompted him to visit his home. For want of such evidence, no causal connection could be established between the factum of death and nature of his employment. No theory of notional extension of employment could, therefore, be invoked. The learned Commissioner simply quoted some authorities relied on by the Advocate of the L.Rs. and held in paragraph No.13 as under :

“In the case in hand the deceased was on duty as a driver on the ambulance of respondent No.1. Due to some urgent work he asked his colleague for motorcycle and was going to home. It means he was on the way to home after his employment. Therefore, considering facts and circumstances of the case and in view of law laid down in the cited case authorities, in my view, the incident in the case in hand covered during the course of employment of deceased with respondent No.1.”

17. In view of this Court, the findings recorded by the learned Commissioner has no foundation in the evidence. The appeal, therefore, succeeds. Hence the order :

ORDER

- (i) The First Appeal is allowed.
- (ii) The impugned order dated 16/10/2020, passed by the Ex-Officio Commissioner for Employee's Compensation & Civil Judge, (Sr. Division), Parbhani in W.C.F.A. No.6/2016 is hereby set aside.
- (iii) W.C.F.A.No.6/2016 stands dismissed.
- (iv) Amount in deposit, if any with this Court or the Commissioner, be paid back to the appellant along with interest accrued thereon.
- (v) In view of disposal of First Appeal, Civil Application No.2197/2021 stands disposed of.

**(R. G. AVACHAT)
JUDGE**

fmp/-